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ARTIFEX SOFTWARE, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ARTIFEX SOFTWARE, INC.,

Plaintiff,

v.

FIRST NATIONAL TITLE INSURANCE
COMPANY,

Defendant.

Case No.

**COMPLAINT FOR
1. COPYRIGHT INFRINGEMENT
2. BREACH OF CONTRACT
3. BREACH OF CONTRACT

DEMAND FOR JURY TRIAL**

Plaintiff Artifex Software, Inc. ("Artifex") for its Complaint against Defendant First National Title Insurance Company ("First National Title") alleges and avers as follows:

INTRODUCTION

1. Artifex is the owner of MuPDF, a leading program used to interpret certain page description language files, such as Adobe Systems Incorporated's ("Adobe") Portable Document Format ("PDF") files. MuPDF is a widely used PDF interpreter and far outperforms its competitors on reliability and performance benchmarks. In addition to offering commercial licenses to MuPDF, Artifex has licensed and continues to license MuPDF to the public under conditional open source licenses—such as the GNU General Public License version 3.0 ("GNU

PARTIES

6. Plaintiff Artifex is a California corporation with its principal place of business at 1305 Grant Avenue, Suite 200, Novato, California 94945.

7. Defendant First National Title is a Texas corporation with a principal place of business at 2400 Dallas Parkway, Suite 580, Plano, Texas 75093. On information and belief, First National Title does business in California. On information and belief, First National Title has offered and distributed its infringing products incorporating MuPDF in California through the Internet, at least through California-based Google Inc.'s Google Play marketplace.

JURISDICTION AND VENUE

8. Artifex's claim for copyright infringement arises under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* Artifex also brings a related state law claim for breach of contract.

9. This Court has original subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1338, and 1367.

10. This Court has specific personal jurisdiction over First National Title as it, through (1) its offering and distribution of its infringing products containing MuPDF through the Internet to citizens of California and (2) conducting business with companies in California, such as Google Inc. and Artifex—including entering into the GNU AGPL or the GNU GPL with Artifex—purposefully committed within California the acts from which these claims arise and/or committed tortious acts outside California, knowing and intending that such acts would cause injury within the state to Artifex, a California corporation. The Court also has general personal jurisdiction over First National Title as it conducts continuous, systematic, and routine business through the Internet within the state of California and within the jurisdiction of this Court, which makes First National Title essentially at home in California.

11. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(a).

INTRADISTRICT ASSIGNMENT

12. This is an Intellectual Property Action and therefore assignment to any division of the Court is proper pursuant to Civil L.R. 3-2(c). Artifex believes assignment to the San

1 Francisco division is particularly appropriate given its proximity to the principal offices of Artifex
2 as well as Artifex's counsel of record.

3 GENERAL ALLEGATIONS

4 Artifex and MuPDF

5 13. Artifex is a closely-held, private corporation that was formed in 1993 and is
6 headquartered in Novato, California. Artifex develops and licenses software products that
7 interpret files written in a page description language ("PDL").

8 14. A PDL is a computer language developed for describing the contents of a printed
9 page. A widely used example of a PDL is the Portable Document Format ("PDF") developed by
10 Adobe Systems Incorporated ("Adobe"). PDF files generally allow for a document created on
11 one platform to be displayed and/or printed on another platform exactly as it had been on the first.
12 This is true regardless of whether the document consists of graphics, text, or both. Moreover,
13 PDF files will display text on the screen as it would be displayed on printed pages regardless of
14 the font that the text was created in and regardless of whether the displaying computer (or printer)
15 is loaded with such fonts. Fonts used in PDF files are embedded within the PDF file itself,
16 eliminating the need for both computers to install the same fonts. PDF files, moreover, are
17 generally created from the print stream generated by a program. A PDF creator will capture the
18 information from the print stream and convert it into a PDF file. One drawback of PDF files is
19 that, in general, they cannot be edited once the underlying document is encapsulated as a PDF
20 file. These are called "static" PDF files.

21 15. MuPDF is a program developed by Artifex that can interpret PDF files.

22 16. MuPDF is a widely used PDF interpreter. Artifex has earned the confidence of its
23 customers through the demonstrated reliability of its products and highly competitive results on
24 performance benchmarks. These results have been accomplished only through extensive
25 investment in research and development of the MuPDF software as well as the scrutiny of dozens
26 of external beta testers and thousands of diverse users on the Internet. Artifex has expended
27 substantial amounts of money on research and development in order to improve and update
28 MuPDF.

17. Artifex's business is, in part, based on the revenues derived from Artifex's position as the exclusive commercial licensing agent of MuPDF. Artifex licenses MuPDF to the public under different licensing schemes. For those seeking to commercially distribute MuPDF or any product that incorporates MuPDF, Artifex will grant, for a fee, a license to use, modify, copy, and/or distribute MuPDF.

18. For non-commercial users willing to comply with certain open-source licensing requirements, Artifex currently provides licenses for MuPDF under the GNU AGPL. A true and correct copy of the GNU AGPL is attached hereto as **Exhibit 1**. Before February 2013, and at least since June 2010, Artifex provided licenses for MuPDF under the GNU GPL. A true and correct copy of the GNU GPL is attached hereto as **Exhibit 2**.

19. Artifex does not charge a fee for licenses granted under the GPL open source licenses, which were created to promote the open-source development of software products. Towards that end, the GPL open source licenses grant the end user the right to copy, modify, or distribute complying copies of MuPDF.

First National Title and Its Infringing Software

20. First National Title is a private Texas corporation with estimated revenue of approximately \$77.8 million in 2016.

21. At least as early as mid-2015, First National Title Insurance Company downloaded a copy of Artifex's MuPDF software.

22. First National Title subsequently incorporated Artifex's MuPDF software into at least fourteen of its mobile applications (collectively, the "FNTI Apps"):

- a. FIRST App - Real Estate Title
- b. Texas Secure-Real Estate Title
- c. Yavapai Title Agency
- d. Sewell Title
- e. South Land Real Estate Title
- f. Excel Title - Real Estate
- g. Title Resources - Real Estate

1 h. firstAZtitle - Real Estate

2 i. Pioneer Title Agency

3 j. CapApp Real Estate

4 k. Texas Title - El Paso

5 l. CentralLand Title

6 m. Texas Title

7 n. Sewell Title Weatherford

8 23. Before First National Title purportedly removed MuPDF from the FNTI Apps in
9 August 2017 after receiving a second demand letter from Artifex, First National Title distributed
10 versions of each of the mobile applications containing MuPDF to its customers via the Google
11 Play marketplace.

12 24. Artifex initially contacted First National Title regarding its unauthorized use of
13 MuPDF on or around March 17, 2017.

14 25. In June 2017, a software developer from Clarion Technologies, Krishna Kumar,
15 informed Artifex: “We had been using MuPDF as a PDF viewer in our mobile application. We
16 came across this product while browsing for free tools and we got it directly from the Github
17 repository. MuPDF is used in our mobile applications that are used by our internal resources
18 under various agencies. We realized that we need to buy commercial license [sic] for this.” As
19 the dialogue continued into July 2017, Mr. Kumar indicated that Clarion Technologies was
20 developing mobile applications incorporating MuPDF for a “parent company” but he did not
21 identify the company.

22 26. In subsequent correspondence during July and August 2017, First National Title
23 revealed to Artifex that First National Title was the “parent company” to which Mr. Kumar had
24 referred. First National Title identified Mr. Kumar as First National Title’s “subcontractor.”

25 27. First National Title, through its agent and subcontractor, Mr. Kumar, sought to
26 anonymously mislead Artifex into unknowingly granting First National Title a commercial
27 license to use MuPDF. But First National Title did not succeed.
28

1 28. On information and belief, First National Title downloaded and used a version of
2 MuPDF then-licensed to non-commercial users under the GNU AGPL. In the alternative, and
3 dependent on the exact date(s) First National Title downloaded the version(s) of MuPDF that
4 First National Title used, First National Title used a version of MuPDF licensed to non-
5 commercial users under the GNU GPL.

6 29. Because First National Title used and distributed MuPDF without a commercial
7 license with Artifex, First National Title has consented to the terms of the GNU AGPL or, in the
8 alternative, the GNU GPL, and is a party to that agreement with Artifex.¹ The GNU AGPL and
9 the GNU GPL provide at Section 9:

10 You are not required to accept this License in order to receive or run
11 a copy of the Program. Ancillary propagation of a covered work
12 occurring solely as a consequence of using peer-to-peer transmission
13 to receive a copy likewise does not require acceptance. However,
14 nothing other than this License grants you permission to propagate
 or modify any covered work. These actions infringe copyright if you
 do not accept this License. Therefore, by modifying or propagating a
 covered work, you indicate your acceptance of this License to do so.

15 30. First National Title's use of MuPDF, however, did not comply with the conditions
16 imposed by the GNU AGPL or the GNU GPL.

17 31. Before August 2017, First National Title integrated MuPDF into the FNTI Apps in
18 a way that an end user interfaced with only the FNTI Apps without any option for opting out of
19 use of MuPDF or the obligations concerning MuPDF under the GNU AGPL or the GNU GPL.
20 The end user was never separately notified that MuPDF was part of the FNTI Apps. First
21 National Title's use and incorporation of MuPDF was seamless and entirely invisible to the end
22 user.

23 32. Because the FNTI Apps incorporated MuPDF in this way, First National Title was
24 required to distribute its software with the accompanying source code. The GNU AGPL and the
25 GNU GPL provide at Section 6:

26 You may convey a covered work in object code form under the terms
27 of sections 4 and 5, provided that you also convey the machine-

28 ¹ For purposes of this complaint, Artifex alleges alternative breaches of sections of the GNU
AGPL and the GNU GPL that are identical both in their language and numbering.

readable Corresponding Source under the terms of this License, in one of these ways:

a) Convey the object code in, or embodied in, a physical product (including a physical distribution medium), accompanied by the Corresponding Source fixed on a durable physical medium customarily used for software interchange.

b) Convey the object code in, or embodied in, a physical product (including a physical distribution medium), accompanied by a written offer, valid for at least three years and valid for as long as you offer spare parts or customer support for that product model, to give anyone who possesses the object code either (1) a copy of the Corresponding Source for all the software in the product that is covered by this License, on a durable physical medium customarily used for software interchange, for a price no more than your reasonable cost of physically performing this conveying of source, or (2) access to copy the Corresponding Source from a network server at no charge.

...

d) Convey the object code by offering access from a designated place (gratis or for a charge), and offer equivalent access to the Corresponding Source in the same way through the same place at no further charge. You need not require recipients to copy the Corresponding Source along with the object code. If the place to copy the object code is a network server, the Corresponding Source may be on a different server (operated by you or a third party) that supports equivalent copying facilities, provided you maintain clear directions next to the object code saying where to find the Corresponding Source. Regardless of what server hosts the Corresponding Source, you remain obligated to ensure that it is available for as long as needed to satisfy these requirements.

e) Convey the object code using peer-to-peer transmission, provided you inform other peers where the object code and Corresponding Source of the work are being offered to the general public at no charge under subsection 6d.

33. First National Title never distributed and has never distributed any of the FNTI Apps with the accompanying source code or source code offer while the software incorporated MuPDF. First National Title thus failed to comply with and breached its license to use and distribute MuPDF under the GNU AGPL or the GNU GPL.

34. Artifex has expended and will expend a significant amount of its own resources to enforce First National Title's contractual obligations under the GNU AGPL or the GNU GPL, including the costs incurred in filing this Complaint and the future costs associated with litigating Artifex's claims. First National Title, furthermore, has been unjustly enriched at the expense of

1 Artifex by avoiding the payment of any license fees and distributing the FNTI Apps, which
2 contain MuPDF in breach of the GNU AGPL or the GNU GPL.

3 35. The GNU AGPL and the GNU GPL expressly state that any use of a product
4 licensed thereunder or a work containing or derived from that product that does not comply with
5 their respective requirements immediately terminates the licensee's right to use that product. The
6 GNU AGPL and the GNU GPL provide at Section 8:

7 You may not propagate or modify a covered work except as
8 expressly provided under this License. Any attempt otherwise to
9 propagate or modify it is void, and will automatically terminate your
rights under this License (including any patent licenses granted under
the third paragraph of section 11).

10 36. First National Title's failure to distribute source code along with the FNTI Apps
11 constitutes breach of the requirements set forth in the GNU AGPL and the GNU GPL, and
12 identified above. First National Title's right to copy or distribute MuPDF terminated upon these
13 acts.

14 **Artifex's Copyright in MuPDF**

15 37. MuPDF contains a substantial amount of original material that is copyrightable
16 pursuant to 17 U.S.C. §102. Artifex has complied in all respects with the Copyright Act of 1976,
17 17 U.S.C. §§ 101 *et seq.* and all other laws governing copyright, and has obtained from the
18 Registrar of Copyrights Certificate of Registration No. TX 6-989-229 for MuPDF version
19 20070105. A true and correct copy of this Certificate of Registration is attached hereto as
20 **Exhibit 3**. Artifex filed on January 22, 2018 an application to register with the United States
21 Copyright Office MuPDF version 20120906. A true and correct copy of that application is
22 attached hereto as **Exhibit 4**.

23 38. Artifex has placed copyright notices on all copies of MuPDF version 20070105
24 and version 20120906 that it has produced and licensed. Any copies of the programs published
25 by Artifex or under Artifex's authority or license have been published in strict conformity with
26 the provisions of the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*, and all other laws
27 governing copyright.
28

1 39. As set forth above, First National Title never entered into a commercial license
2 agreement with Artifex for its use of MuPDF, and it failed to comply with the terms of the GNU
3 AGPL and the GNU GPL such that First National Title used and distributed MuPDF without
4 authorization under the GNU AGPL or the GNU GPL, or any other agreement. First National
5 Title, therefore, copied and distributed MuPDF without the authorization of Artifex. Such
6 activity constitutes infringement of Artifex's copyright in MuPDF as well as a substantial,
7 irreparable harm upon Artifex.

8 **FIRST CLAIM FOR RELIEF**

9 **COPYRIGHT INFRINGEMENT**

10 **(17 U.S.C. § 101 *et seq.*)**

11 40. Artifex realleges and incorporates by reference each and every allegation set forth
12 in paragraphs 1-39, inclusive.

13 41. Before initiating this action, Artifex registered version 20070105 of MuPDF with
14 the United States Copyright Office on January 5, 2007, under Registration No. TX 6-989-229.

15 42. Before initiating this action, Artifex also filed an application with the United States
16 Copyright Office on January 22, 2018 to register version 20120906 of MuPDF.

17 43. Through the actions complained of herein, First National Title has infringed and
18 will continue to infringe Artifex's copyright in and relating to any version of MuPDF that First
19 National Title used, including version 20070105 and version 20120906, or derivative works
20 thereof, by producing, distributing, and placing upon the market the FNTI Apps, or portions
21 thereof which were copied from Artifex's copyrighted software.

22 44. During all relevant time periods, First National Title has lacked any valid license
23 to shield its infringing conduct.

24 45. Artifex is entitled to an injunction restraining First National Title, its officers,
25 agents, employees, assigns and all persons acting in concert with them from engaging in further
26 such acts of reproduction or distribution in violation of federal copyright law.

27 46. Artifex is entitled to recover from First National Title the damages Artifex has
28 sustained and will sustain as a result of First National Title's wrongful acts as alleged herein.

1 Artifex is further entitled to recover from First National Title the gains, profits, and advantages
2 First National Title has obtained as a result of its wrongful acts. The full extent of Artifex's
3 damages and the gains, profits, and advantages First National Title has obtained by reason of its
4 aforesaid acts of copyright infringement cannot be determined at this time, but will be proven at
5 trial.

6 **SECOND CLAIM FOR RELIEF**

7 **BREACH OF CONTRACT**

8 **(GNU Affero General Public License)**

9 47. Artifex realleges and incorporates by reference each and every allegation set forth
10 in paragraphs 1-46, inclusive.

11 48. Artifex has performed each of the conditions, covenants, and obligations imposed
12 on it by the terms of the GNU AGPL with First National Title.

13 49. Artifex granted First National Title a license to copy and distribute MuPDF under
14 the GNU AGPL. By First National Title's actions as set forth hereinabove, First National Title
15 has substantially and materially breached the GNU AGPL at least by failing to provide the source
16 code of the FNTI Apps to each licensee or a written offer to provide a copy of the source code
17 upon the request of each licensee.

18 50. As a direct and proximate result of these material breaches by First National Title,
19 Artifex is entitled to an injunction requiring First National Title to distribute to each licensee of
20 the FNTI Apps the complete corresponding source code for those products.

21 51. Artifex is further entitled to recover from First National Title the damages Artifex
22 has sustained, including consequential damages, for Artifex's costs in enforcing the GNU AGPL.
23 The amounts cannot be determined at this time. Artifex is also entitled to recover as restitution
24 from First National Title any unjust enrichment, including any gains, profits, and advantages that
25 First National Title has obtained as a result of its breach of the GNU AGPL. The amount of such
26 unjust enrichment cannot be determined at this time.

THIRD CLAIM FOR RELIEF
(In the alternative to the Second Claim for Relief)
BREACH OF CONTRACT
(GNU General Public License)

52. Artifex realleges and incorporates by reference each and every allegation set forth in paragraphs 1-51, inclusive.

53. In the alternative, Artifex has performed each of the conditions, covenants, and obligations imposed on it by the terms of the GNU GPL with First National Title.

54. In the alternative, Artifex granted First National Title a license to copy and distribute MuPDF under the GNU GPL. By First National Title's actions as set forth hereinabove, First National Title has substantially and materially breached the GNU GPL at least by failing to provide the source code of the FNTI Apps to each licensee or a written offer to provide a copy of the source code upon the request of each licensee.

55. In the alternative, as a direct and proximate result of these material breaches by First National Title, Artifex is entitled to an injunction requiring First National Title to distribute to each licensee of the FNTI Apps the complete corresponding source code for those products.

56. In the alternative, Artifex is further entitled to recover from First National Title the damages Artifex has sustained, including consequential damages, for Artifex's costs in enforcing the GNU GPL. The amounts cannot be determined at this time. Artifex is also entitled to recover as restitution from First National Title any unjust enrichment, including any gains, profits, and advantages that First National Title has obtained as a result of its breach of the GNU GPL. The amount of such unjust enrichment cannot be determined at this time.

PRAYER FOR RELIEF

Artifex prays for judgment against First National Title as follows:

1. For permanent injunctive relief, including an order restraining and enjoining First National Title from further infringement of Artifex's copyright, specifically:
 - a. that First National Title, as well as any successor entities, its directors and officers, agents, servants, employees, assigns, and all other persons acting

1 in active concert or privity or in participation with them, and each of them,
2 be enjoined from continuing to market, offer, sell, dispose of, license,
3 lease, transfer, display, advertise, reproduce, develop or manufacture any
4 version of MuPDF and any works derived or copied from any such version
5 of MuPDF or to participate or assist in any such activity;

6 b. that First National Title, as well as any successor entities, its directors and
7 officers, agents, servants, employees, assigns, and all other persons acting
8 in active concert or privity or in participation with them, be enjoined from
9 directly or indirectly infringing Artifex's copyright in MuPDF;

10 c. that First National Title, as well as any successor entities, its directors and
11 officers, agents, servants, employees, assigns, and all other persons acting
12 in active concert or privity or in participation with them, be enjoined to
13 return to Artifex any originals, copies, facsimiles, or duplicates of any
14 version of MuPDF or any works derived or copied from MuPDF in their
15 possession, custody, or control that are shown by the evidence to infringe
16 any Artifex copyright;

17 d. that First National Title be enjoined to recall from all distributors,
18 wholesalers, dealers, retailers, non-Artifex-licensed customers and
19 distributors, and all others known to First National Title any originals,
20 copies, facsimiles, or duplicates of any works shown by the evidence to
21 infringe any Artifex copyright;

22 e. that First National Title be enjoined to deliver upon oath, to be impounded
23 during the pendency of this action, and for destruction pursuant to
24 judgment herein, all originals, copies, facsimiles, or duplicates of any
25 version of MuPDF or any works derived or copied from any such version
26 of MuPDF in its possession, custody, or control that are shown by the
27 evidence to infringe any Artifex copyright;
28

